

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application filed under 37 CFR §1.114. No new matter has been presented and support for the claims may be found, among other places, on page 3 of the specification as originally filed.

I. Rejection Under 35 USC §103

The Examiner continues to maintain the rejection of claims 1-3, 5-9, 11-13, 15-17, 19 and 20 under 35 USC §103, and continues to allege that the claims are unpatentable over Nagatani et al., U.S. Patent Application No. 2002/0176833 (hereinafter, '833). In the rejection, the Examiner again maintains, in summary, that the '833 reference describes pigmented and non-pigmented cosmetic compositions having 0.1-30% by weight of hollow plate metal oxide particles (zirconium oxide) that have an average particle diameter of 5-12 microns, and inorganic particles having platy structure and a refractive index of 1.6-1.8 and a total transmittance of at least 85%. The Examiner mentions that the compositions described in the '833 reference yield an excellent feeling of transparency, brightness and natural finish. The Examiner also mentions that the '833 reference does not explicitly teach the claimed opacity of the composition (i.e., less than 20%) but again concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine "..., an optimal and workable opacity of the composition through routine experimentation." In view of this, the Examiner continues to conclude that the rejection to the above-identified claims under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is, again, the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention as set forth in independent claim 1, as now presented, is directed to a skin care or cleaning composition comprising particles that consist essentially of from about 0.01% to about 1.0% by weight of a solid single-crystal, flat, platy particle, the particle having an index of refraction from about 1.8 to about 2.2; and a cosmetically acceptable vehicle, wherein the composition, again, has an opacity of less than about 20%.

The invention of claim 1 is, again, further defined by the dependent claims which claim, among other things, that the opacity of the composition can be less than about 10%, the type of platy particles selected, the size of the platy particles, the thickness of the platy particles, that the composition can be leave on or wash off, the amount of platy particles used in the composition, that the composition can comprise a skin benefit agent, the amount of skin benefit agent that may be used and the type of skin benefit agent that may be used. New claim 21 further characterizes the composition of claim 1 whereby the particles consist of solid single-crystal, flat, platy particles.

As already made of record on numerous occasions, independent claim 16 is directed to a skin care composition consisting essentially of about 0.01% to about 1.0% by weight solid single-crystal, flat, platy particles, the particles having an index of refraction of about 1.8 to about 2.2 and a cosmetically acceptable vehicle wherein the composition has an opacity of less than about 20% and further wherein the composition is non-pigmented or colorless.

The invention of claim 16 is, again, further defined by the dependent claims which claim, among other things, the type of platy particles used, the diameter of the platy particles and the thickness of the platy particles. New claim 22 further defines the particles used in the composition as particles which consist of the solid single-crystal, flat, platy particle.

In contrast, and as already made of record, the '833 reference merely discloses a cosmetic composition having metal oxide plate powder with a hollow structure. The cosmetic composition provides a feeling of transparency by causing a remarkable change in hue.

Again, paragraph 27 of the '833 reference clearly mentions that when inorganic powder having a refractive index of 1.6-1.8 is used, such a component is used at a concentration of 20% by weight. Applicant respectfully points out to the Examiner that when particles having an index of refraction of 1.8-2.2 are used in the composition of the invention as claimed, about 0.01% to about 1.0% by weight of the solid single-crystal, flat, platy particles are used. Twenty percent (20%) is not used as described in the '833 reference. Furthermore, the cosmetic compositions described in the '833 references require hollow plate powder (A) so that various color tones may be prepared. The present invention, again as now presented, does not require hollow plate powders to generate various color tones. In fact, the compositions of the present invention provide a radiant appearance to skin and a colorless or natural skin finish.

In view of the above, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in the '833 reference. In fact, for the reasons above, the '833 reference teaches away from the claimed inventions as now

presented. Therefore, the rejection made under 35 USC §103 should be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

The Examiner has, again, rejected claims 4, 10 and 18 under 35 USC §103 as being unpatentable over Nagatani et al., U.S. Patent Application No. 2002/0176833 (hereinafter, '833) in view of Dreher, U.S. Patent No. 2003/0157041 (hereinafter, '041).

In the rejection, the Examiner again relies on the '833 reference for the reasons made of record. The Examiner continues to acknowledge that the '833 reference does not describe the use of bismuth oxychloride. However, the Examiner continues to rely on the '041 reference which mentions that plate-like bismuth oxychloride particles may be used in compositions.

In view of the above, the Examiner again concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the compositions of the '833 reference to use bismuth oxychloride in lieu of particles like boron nitride or barium sulfate. Thus, the Examiner continues to believe that claims 4, 10 and 18 are appropriately rejected under 35 USC §103.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claims 1 and 16 are directed to specific skin care or cleaning compositions with solid single-crystal, flat, platy particle having an index refraction of 1.8 to about 2.2 whereby the particle is present within the composition at an amount from about 0.01% to about 1.0%. As now presented, the particles in the composition defined in claim 1 consist essentially of such solid single-crystal, flat platy particles. New claim 21 characterizes the particles as those consisting of solid single-crystal, flat platy particles.

As already made of record, the '833 reference merely discloses a cosmetic composition requiring metal oxide plate powder with a hollow structure. The '833 reference clearly mentions that when inorganic powder having a refractive index of 1.6 -1.8 is used, such a powder is used at a concentration of about 20% by weight. Since the amount employed in the compositions of the '833 reference is significantly higher than those claimed in the present inventions, the combination of the '833 reference with the '041 reference does not render the claimed invention obvious. Moreover, and as already made of record, the compositions described in the '833 references require such hollow plate powders to generate various color tones. The present invention is directed to compositions that impart a radiant appearance to the skin with a colorless or natural skin finish. The '041 reference cures none of the deficiencies of the '833 reference since it is directed to an optical make-up composition having an interference pigment with blue or violet reflectants. Furthermore, since claims 4 and 10 depend from independent claim 1 and claim 18 depends from independent claim 16, all of the limitations set forth in the claimed inventions as they relate to claims 4, 10 and 18 are not found in the combination of references relied on by the Examiner. Therefore, Applicant respectfully requests, again, that the obviousness rejection be withdrawn and rendered moot.

IV. Rejection Under 35 USC §103

The Examiner has, again, rejected claims 13 and 14 under 35 USC §103 as being unpatentable over Nagatani et al., U.S. Patent Application No. 2002/0176833 (hereinafter, '833) in view of Tan et al, U.S. Patent No. 6,511,672. In the rejection, the Examiner continues to conclude, in summary, that the '833 reference is applied for the reasons set forth as above and that the '672 reference is applied for the reasons set forth of record and particularly for showing that skin benefit agents such as vitamins and other skin benefit agents may be employed in topical compositions. In view of this, the Examiner continues to believe that the rejection made to claims 13 and 14 under 35 USC §103 are appropriate.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1 is directed to a skin care cleansing composition with about 0.1 to about 1.0% by weight solid single-crystal, flat, platy particle where the particle has an index of refraction of about 1.8 to about 2.2. The '833 reference is directed to a composition that comprises 20% by weight inorganic powder having a refractive index of 1.6-1.8. The compositions of the '833 reference require hollow plate powders for the generation of various color tones.

Again, for the reasons made of record, none of the important and critical limitations set forth in the presently claimed invention are even remotely found in the '833 reference and claims 13 and 14 are dependent from independent claim 1. Furthermore, the '672 reference cures none of the deficiencies of the '833 reference since the same merely

describes a composition having a pigment with a first platelet of aluminum treated with a metal oxide and blended with at least one second platelet treated with at least one spherical scattering component. Again, none of the vast deficiencies of the '833 reference are even remotely cured by the '672 reference. In view of this, Applicant respectfully requests that the obviousness rejection be withdrawn and rendered moot.

Response to Arguments

Turning to the Examiner's response to the arguments of record, the particles employed in the present invention are defined to consist essentially of solid single-crystal, flat, platy particles or consist of the same as set forth in new claims 21 and 22. In contrast, the compositions of the '833 reference require hollow plate powders for the preparation of various color tones. Moreover, the '833 reference mentions the use of 0.01 to 99% inorganic powder. Thus, there are endless options (i.e., ranges) that may be selected and it would not have been obvious to employ particles with 0.01 to about 1% by weight solid-crystal, flat, platy particles as described and claimed herein.

Applicant submits that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions or concerns with respect to the present patent application, the Examiner is kindly invited to contact the undersigned counsel at her earliest convenience.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "E.A. Squillante, Jr.", written over a horizontal line.

Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

EAS/pod
(201) 894-2925